Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No. 15-420

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

MICHAEL BRYANT, JR.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR A WRIT OF CERTIORARI FILED: OCT. 5, 2015
CERTIORARI GRANTED: DEC. 14, 2015

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Docket No. 12-30177

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

MICHAEL BRYANT, JR., DEFENDANT-APPELLANT

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
5/18/12	1	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. Reporters Transcript required: Yes. Sentence imposed: 46 mos. Transcript ordered by 06/08/2012. Transcript due 07/09/2012. Appellant briefs and excerpts due by 08/17/2012 for Michael Bryant Jr.. Appellee brief due 09/17/2012 for United States of America. Appellant's optional reply brief is due 14 days after service of the answering brief. [8184206] (WF) [Entered: 05/18/2012 03:30 PM]
		* * * * *
8/31/12	4	Submitted (ECF) Opening brief for review. Submitted by Appellant

DATE	DOCKET NUMBER	PROCEEDINGS
		Michael Bryant, Jr.. Date of service: 08/31/2012. [8307595] (Babcock, Steven) [Entered: 08/31/2012 02:44 PM]
		* * * * *
8/31/12	6	Filed clerk order: The opening brief [4] submitted by Michael Bryant, Jr. is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: blue. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate ECF. [8307717] (RH) [Entered: 08/31/2012 03:22 PM]
		* * * * *
9/4/12	8	Filed Appellant Michael Bryant, Jr. excerpts of record in 2 volumes. Served on 08/31/2012. [8309101] (RH) [Entered: 09/04/2012 02:07 PM]

DATE	DOCKET NUMBER	PROCEEDINGS
9/4/12	9	Filed by Appellant 4 copies of presentence report UNDER SEAL. [8309106] (RH) [Entered: 09/04/2012 02:08 PM]
		* * * * *
11/15/12	15	Submitted (ECF) Answering brief for review. Submitted by Appellee USA. Date of service: 11/15/2012. [8403218] (Shin, Michael) [Entered: 11/15/2012 12:29 PM]
11/15/12	16	Filed clerk order: The answering brief [15] submitted by USA is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: red. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate ECF. [8403302] (RH) [Entered: 11/15/2012 01:07 PM]
		* * * * *
12/13/12	20	Submitted (ECF) Reply brief for review. Submitted by Appellant

DATE	DOCKET NUMBER	PROCEEDINGS
		Michael Bryant, Jr.. Date of service: 12/13/2012. [8437937] (Babcock, Steven) [Entered: 12/13/2012 02:04 PM]
12/13/12	21	Filed clerk order: The reply brief [20] submitted by Michael Bryant, Jr. is filed. Within 7 days of the filing of this order, appellant is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: gray. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate ECF. [8438360] (GV) [Entered: 12/13/2012 03:48 PM]
		* * * * *
4/24/13	29	Filed clerk order (Deputy Clerk: SM): Consideration of this case is stayed pending the issuance of the mandate in United States v. First, No. 11-30346 (argued Nov. 8, 2012). Upon issuance of that mandate, the parties shall file, within 30 days, supplemental briefs discussing the effect of First on the present appeal.

DATE	DOCKET NUMBER	PROCEEDINGS
		The briefs shall be filed simultaneously and contain no more than 4,000 words. The oral argument scheduled for May 7, 2013 is vacated. This case is returned to the clerk for rescheduling before the next available Portland panel following the issuance of the First mandate and the completion of supplemental briefing. [8603745] (SM) [Entered: 04/24/2013 04:43 PM]
		* * * * *
10/2/13	32	Filed (ECF) Appellee USA citation of supplemental authorities. Date of service: 10/02/2013. [8806204] (Johnson, Leif) [Entered: 10/02/2013 10:48 AM]
1/21/14	33	Submitted (ECF) Supplemental Brief for review. Submitted by Appellee USA. Date of service: 01/21/2014. [8944452] (Johnson, Leif) [Entered: 01/21/2014 07:54 AM]
1/21/14	34	Filed (ECF) presentence report UNDER SEAL by Appellee USA. [8944454] (Johnson, Leif) [Entered: 01/21/2014 07:55 AM]
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
1/21/14	37	Filed clerk order: The supplemental brief [33] submitted by USA is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: tan. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate ECF. [8945658] (GV) [Entered: 01/21/2014 02:33 PM]
		* * * * *
1/27/14	39	Submitted (ECF) Supplemental Brief for review. Submitted by Appellant Michael Bryant, Jr.. Date of service: 01/27/2014. [8953738] (Babcock, Steven) [Entered: 01/27/2014 02:18 PM]
1/28/14	40	Filed clerk order: The supplemental brief [39] submitted by Michael Bryant, Jr. is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each

DATE	DOCKET NUMBER	PROCEEDINGS
		copy of the brief, that the brief is identical to the version submitted electronically. Cover color: tan. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate ECF. [8956590] (GV) [Entered: 01/28/2014 04:19 PM]
		* * * * *
4/9/14	43	Submitted (ECF) excerpts of record. Submitted by Appellant Michael Bryant, Jr.. Date of service: 04/09/2014. [9050381] (Babcock, Steven) [Entered: 04/09/2014 07:46 AM]
4/29/14	44	Notice of Oral Argument on Thursday, July 10, 2014 - 09:00 A.M. - PO 2nd Floor Ctrm - Portland, OR.
		* * * * *
7/7/14	47	Filed (ECF) Appellee USA Correspondence: Letter of Concession regarding prior tribal court convictions. Date of service: 07/07/2014 [9157918] (Johnson, Leif) [Entered: 07/07/2014 12:15 PM]

DATE	DOCKET NUMBER	PROCEEDINGS
7/8/14	48	Filed (ECF) Appellant Michael Bryant, Jr. citation of supplemental authorities. Date of service: 07/08/2014. [9159812] (Babcock, Steven) [Entered: 07/08/2014 11:25 AM]
7/10/14	49	ARGUED AND SUBMITTED TO HARRY PREGERSON, RICHARD A. PAEZ and PAUL J. WATFORD. [9164057] (ML) [Entered: 07/10/2014 01:40 PM]
9/30/14	50	FILED OPINION (HARRY PREGERSON, RICHARD A. PAEZ and PAUL J. WATFORD) REVERSED. Judge: RAP Authoring, Judge: PJW Concurring. FILED AND ENTERED JUDGMENT. [9258669] (RP) [Entered: 09/30/2014 08:12 AM]
		* * * * *
12/15/14	56	Filed (ECF) Appellee USA petition for rehearing en banc (from 09/30/2014 opinion). Date of service: 12/15/2014. [9349054] [12-50177] (Johnson, Leif) [Entered: 12/15/2014 10:53 AM]

DATE	DOCKET NUMBER	PROCEEDINGS
12/24/14	57	Submitted (ECF) Amicus brief for review and filed Motion to become amicus curiae. Submitted by National Congress of American Indians. Date of service: 12/24/2014. [9361164] [12-30177] (Segal, Joshua) [Entered: 12/24/2014 08:16 AM]
		* * * * *
12/26/14	59	Filed order (HARRY PREGERSON, RICHARD A. PAEZ and PAUL J. WATFORD): Appellant is ordered to file a response to Appellee United States of Americaâ€™s Petition for Rehearing En Banc, filed on December 15, 2014 (Dkt. 56). The response shall be filed within twenty one (21) days of the date of this order, and shall not exceed fifteen pages. [9362892] (AF) [Entered: 12/26/2014 04:04 PM]
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
3/17/15	62	Filed (ECF) Appellant Michael Bryant, Jr. response to Petition for Rehearing En Banc (ECF Filing), Petition for Rehearing En Banc (ECF Filing) for rehearing by en banc only (all active, any interested senior judges). Date of service: 03/17/2015. [9460641]. [12-30177] (Babcock, Steven) [Entered: 03/17/2015 01:18 PM]
7/6/15	63	Filed Order for PUBLICATION (HARRY PREGERSON, RICHARD A. PAEZ and PAUL J. WATFORD) Concurrence by Judge Paez; Dissent by Judge Owens; Dissent by Judge O'Scannlain) The full court was advised of the petition for rehearing en banc. A judge requested a vote on whether to rehear the matter en banc. The matter failed to receive a majority of the votes of the nonrecused active judges in favor of en banc consideration. Fed. R. App. P. 35. The petition for rehearing en banc is DENIED. Judge McKeown did not participate in the deliberations or vote in this case. [9598308] (RP) [Entered: 07/06/2015 07:06 AM]

DATE	DOCKET NUMBER	PROCEEDINGS
7/15/15	64	MANDATE ISSUED. (HP, RAP and PJW) [9610810] (RL) [Entered: 07/15/2015 10:44 AM]
10/7/15	65	Received notice from the Supreme Court: petition for certiorari filed on 10/05/2015. Supreme Court Number 15-420. [9710176] (RR) [Entered: 10/07/2015 12:58 PM]
12/15/15	66	Received notice from the Supreme Court. The motion of respondent for leave to proceed in forma pauperis is granted. The petition for a writ of certiorari is GRANTED on 12/14/2015. Supreme Court Number 15-420. [9793339] (RL) [Entered: 12/15/2015 02:10 PM]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA (BILLINGS)

Docket No. 11-cr-00070

UNITED STATES OF AMERICA

v.

MICHAEL BRYANT, JR.

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
5/23/11	1	COMPLAINT as to Michael Bryant, Jr (1). (JDH,) [1:11-mj-00030-CSO] (Entered: 05/24/2011)
		* * * * *
5/25/11	3	Minute Entry for proceedings held before Magistrate Carolyn S Ostby: Initial Appearance as to Michael Bryant, Jr held on 5/25/2011. Defendant present and in custody appearing w/Attorney Mark Werner for today only; Ryan Archer appearing for Vince Carroll on behalf of USA. Defendant files a financial affidavit, and the Court appoints Steve Babcock and the Federal Defenders of MT for all proceedings. Defendant waives a preliminary hearing but reserves the right to a detention hearing at a later date.

DATE	DOCKET NUMBER	PROCEEDINGS
		Defendant is remanded to custody of USMS. (Tape #FTR Gold; L/C James Conwell.) (POC,) [1:11-mj-00030-CSO] (Entered: 05/25/2011)
5/25/11	4	ORDER APPOINTING STEVE BABCOCK and the FEDERAL DEFENDERS of MT as to Michael Bryant, Jr. Signed by Magistrate Carolyn S Ostby on 5/25/2011. (POC,) [1:11-mj-00030-CSO] (Entered: 05/25/2011)
5/25/11	5	CJA 23 Financial Affidavit by Michael Bryant, Jr (POC,) [1:11-mj-00030-CSO] (Entered: 05/25/2011)
5/26/11	7	NOTICE *of Assertion of Fifth & Sixth Amendment Rights* by Michael Bryant, Jr (Attachments: # 1 Exhibit Assertion of Fifth & Sixth Amendment Rights) (Babcock, Steven) [1:11-mj-00030-CSO] (Entered: 05/26/2011)
		* * * * *
6/20/11	9	INDICTMENT as to Michael Bryant, Jr (1) count(s) 1-2. (CLR) (Entered: 06/21/2011)
		* * * * *
11/7/11	19	MOTION to Dismiss *Indictment* by Michael Bryant, Jr. (Babcock, Steven) (Entered: 11/07/2011)

DATE	DOCKET NUMBER	PROCEEDINGS
11/07/11	20	BRIEF/MEMORANDUM in Support by Michael Bryant, Jr re 19 MOTION to Dismiss *Indictment* (Babcock, Steven) (Entered: 11/07/2011)
11/14/11	21	RESPONSE to Motion by USA as to Michael Bryant, Jr re 19 MOTION to Dismiss *Indictment United States' Response to Defendant's Motion to Dismiss Indictment* (Carroll, E.) (Entered: 11/14/2011)
		* * * * *
12/21/11	25	Minute Entry for proceedings held before Judge Jack D Shanstrom: MOTION HEARING as to Michael Bryant, Jr held on 12/21/2011 re 19 MOTION to Dismiss *Indictment* filed by Michael Bryant, Jr. Defendant was present and in custody w/ attorney Steven Babcock, and AUSA E. Vincent Carroll was present for the government. Defense counsel made his argument to the court. AUSA made his argument to the court and the Defense gave his final argument. Motions terminated as to Michael Bryant, Jr: 19 MOTION to Dismiss *Indictment* filed by Michael Bryant, Jr.. The

DATE	DOCKET NUMBER	PROCEEDINGS
		court DENIED defendant's motion to dismiss and advised of his right to appeal the decision. The defendant was remanded to the custody of the USMS. (Court Reporter JoAnn Bacheller, L/C V. Pham & D/C H. McLean.) (HMM) (Entered: 12/21/2011)
1/9/12	26	MOTION TO CHANGE PLEA by Michael Bryant, Jr. (Attachments: # 1 Text of Proposed Order) (Babcock, Steven) (Entered: 01/09/2012)
1/10/12	27	CONDITIONAL PLEA AGREEMENT as to Michael Bryant, Jr. (HMM) (Entered: 01/10/2012)
1/11/12	28	Order Setting as to Michael Bryant, Jr. 2/13/2012 trial vacated. Change of Plea Hearing set for 2/8/2012 at 09:45 AM in Billings, MT before Judge Jack D Shanstrom. Signed by Judge Jack D Shanstrom on 1/11/2012. (LEI,) (Entered: 01/11/2012)
1/12/12	29	OFFER OF PROOF as to Michael Bryant, Jr (Carroll, E.) (Entered: 01/12/2012)
2/8/12	30	Minute Entry for proceedings held before Judge Jack D Shanstrom: CHANGE OF PLEA HEARING as to Michael Bryant, Jr held on

DATE	DOCKET NUMBER	PROCEEDINGS
		2/8/2012. Defendant was present and in custody w/ attorney Steven Babcock (Fed.Def.), AUSA E. Vincent Carroll was present for the government and USPO P. McLean was present. Defendant stated his age and education. Defendant states that he has read, understood and signed each page of the plea agreement now on file w/ the Court. The Court advised the Defendant of his rights, the rights he will be waiving by entering a plea of guilty and of the maximum sentence and penalties that could be imposed; Defendant states that he understands his rights. AUSA Carroll read the government's offer of proof into the record and the defendant agreed to facts as stated. Plea entered by Michael Bryant Jr. (1) Guilty as to Counts 1-2. Motions terminated as to Michael Bryant, Jr: 26 MOTION TO CHANGE PLEA filed by Michael Bryant, Jr.. The court set sentencing for 05/09/2012 at 9:15 a.m. in front of Judge Shanstrom in Billings, MT. Defendant was remanded to the custody of the USMS. (Court Reporter Kim Marchwick,

DATE	DOCKET NUMBER	PROCEEDINGS
		L/C V. Pham & D/C H. McLean) (HMM) (Entered: 02/08/2012)
		* * * * *
5/9/12	33	Minute Entry for proceedings held before Judge Jack D Shanstrom: SENTENCING held on 5/9/2012 for Michael Bryant, Jr. as to Count(s) 1-2. Defendant was present and in custody w/ attorney Steven Babcock (Fed.Def.), AUSA Marcia Hurd was present for the government and USPO S. Lyle was present. Defendant stated that he has read the PSR and has no objections. The Court read the guidelines into the record. Defense counsel gave his argument, AUSA gave her argument and the defendant made a statement on his own behalf. Defendant was sentenced to 46 months on Count 1 and 46 months on Count 2 to run concurrent for a total of 46 months to be followed by 3 years of supervised release on Count 1 and 3 years on Count 2 to run concurrent w/ conditions and special conditions. A special assessment of 200.00 is due immediately. Fine was waived by the Court. The Court will reccomend

DATE	DOCKET NUMBER	PROCEEDINGS
		placement at Sheridan, OR (RDAP and vocational rehabilitation). Defendant was advised of his right to appeal and remanded to the custody of the USMS. Presentence Report due by 5/16/2012. (Court Reporter Vonni Bray, L/C T. Mackay & D/C H. McLean.) (HMM) (Entered: 05/09/2012)
5/9/12	34	JUDGMENT as to Michael Bryant, Jr. (1), Count(s) 1-2, Defendant was sentenced to 46 months on Count 1 and 46 months on Count 2 to run concurrent for a total of 46 months to be followed by 3 years of supervised release on Count 1 and 3 years on Count 2 to run concurrent w/ conditions and special conditions. A special assessment of 200.00 is due immediately. Signed by Judge Jack D Shanstrom on 5/9/2012. A copy of this judgment and the SOR was e-mailed sealed to both counsel of record on today's date. (HMM) (Entered: 05/09/2012)
5/10/12	36	PRESENTENCE INVESTIGATION REPORT (Sealed) as to Michael Bryant, Jr. (HMM) (Entered: 05/10/2012)

DATE	DOCKET NUMBER	PROCEEDINGS
5/18/12	37	NOTICE OF APPEAL by Michael Bryant, Jr re 34 Judgment,, Filing fee $0 (waived FedDef), receipt number fdom. (Babcock, Steven) Modified on 5/18/2012 to correct fee info. (HMM) (Entered: 05/18/2012)
		* * * * *
6/10/12	42	TRANSCRIPT OF HEARING ON MOTION filed as to Michael Bryant, Jr. held on 12-21-2011 before Judge Jack D. Shanstrom re 37 Notice of Appeal-Final Judgment. Contact Court Reporter JoAnn Bacheller, 406-698-9965, joanncbacheller @yahoo.com. Transcript may be viewed at the court public terminal or purchased through the court reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER, the clerk's office, or the court reporter. NOTICE: A NOTICE OF INTENT TO REQUEST REDACTION MUST BE FILED WITHIN 14 DAYS OF THIS FILING. Transcript Redaction Procedures. Redaction Request due 7/2/2012. Redacted Transcript Deadline set for 7/11/2012. Release of Transcript

DATE	DOCKET NUMBER	PROCEEDINGS
		Restriction set for 9/10/2012. (JCB) (Entered: 06/10/2012)
		* * * * *
8/30/12	43	Judgment Returned Executed as to Michael Bryant, Jr on 08/22/2012. Defendant was placed at FCI Sheridan in Sheridan, Oregon. (HMM) (Entered: 08/30/2012)
		* * * * *
10/1/14	44	USCA OPINION : We hold that the § 117(a) charges against Bryant must bedismissed because at least one of his predicate tribal court-domestic abuse convictions was uncounseled and resulted ina term of imprisonment. REVERSED (EMH,) (Entered: 10/01/2014)
10/7/14	45	ORDER of USCA as to Michael Bryant, Jr re 37 Notice of Appeal - Final Judgment. (ACL,) (Entered: 10/07/2014)
		* * * * *
7/7/15	58	ORDER of USCA re 37 Notice of Appeal. The full court was advised of the petition for rehearing en banc. A judge requested a vote on whether to rehear the matter en banc. The matter failed to receive a majority of the votes of the nonrecused active

DATE	DOCKET NUMBER	PROCEEDINGS
		judges in favor of en banc consideration. Fed. R. App. P. 35. The petition for rehearing en banc is DENIED. (Concurrence by Judge Paez; Dissent by Judge Owens; Dissent by Judge OScannlain; Judge McKeown did not participate in the deliberations or vote in this case.) (ACL,) Modified on 7/8/2015 to edit text. (NOB) (Entered: 07/07/2015)
		* * * * *
7/23/15	62	TRANSCRIPT of Change of Plea as to Michael Bryant, Jr held on 2/12/2015, before Judge Jack D. Shanstrom. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER, the Clerks Office or the court reporter NOTICE: A NOTICE OF INTENT TO REQUEST REDACTION MUST BE FILED WITHIN 14 DAYS OF THIS FILING. Contact Court Reporter Kim Marchwick, P.O. Box 10447, Bozeman, MT 59719, (406) 671-2307, kimmarchwick@wildblue.net. Trans-

DATE	DOCKET NUMBER	PROCEEDINGS
		cript Redaction Procedures. Redaction Request due 8/13/2015. Redacted Transcript Deadline set for 8/24/2015. Release of Transcript Restriction set for 10/21/2015. (EMH,) (Additional attachment(s) added on 8/11/2015: # 1 Certified Transcript) (EMH,). Modified on 8/11/2015 Official Complete Signend Transcript filed, NEF regenerated (EMH,). (Entered: 07/23/2015)
		* * * * *
8/18/15	64	TRANSCRIPT of SENTENCING re 63 Transcript Designation Order Form, as to Michael Bryant, Jr held on 5/9/2012, before Judge Shanstrom. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/ Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER, the Clerks Office or the court reporter NOTICE: A NOTICE OF INTENT TO REQUEST REDACTION MUST BE FILED WITHIN 14 DAYS OF THIS FILING. Contact Court Reporter Vonni Bray, 406-670-9533. Transcript Redaction Procedures. Redaction Request due 9/8/2015.

DATE	DOCKET NUMBER	PROCEEDINGS
		Redacted Transcript Deadline set for 9/18/2015. Release of Transcript Restriction set for 11/16/2015. (ACL,) (Entered: 08/18/2015)
		* * * * *
8/21/15	65	Unopposed MOTION Unopposed Motion to Release Defendant From Supervised Release by Michael Bryant, Jr. (Attachments: # 1 Text of Proposed Order) (Babcock, Steven) (Entered: 08/21/2015)
8/21/15	66	ORDER granting 65 Motion For Release of Defendant from Supervised Release as to Michael Bryant Jr. (1). Signed by Judge Susan P. Watters on 8/21/2015. (Copy Order to USPO) (EMH,) (Entered: 08/21/2015)
		* * * * *
10/7/15	67	Notice received from U.S. Supreme Court: The petition for a writ of certiorari in the above entitled case was filed on October 5, 2015 and placed on the docket October 5, 2015 as No. 15-420. (EMH,) (Entered: 10/07/2015)
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
12/15/15	68	WRIT OF CERTIORARI GRANTED by US Supreme Court as to Michael Bryant, Jr re 37 Notice of Appeal. The motion of respondent to proceed in forma pauperis is granted. (NOB) (Entered: 12/15/2015)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

CR 11-70-BLG -DS

UNITED STATES OF AMERICA, PLAINTIFF

v.

MICHAEL BRYANT, JR., DEFENDANT

[Filed: June 20, 2011]

INDICTMENT

DOMESTIC ASSAULT BY HABITUAL OFFENDER
Title 18 U.S.C. § 117(a)
(Penalty: Five years imprisonment, $250,000 fine, and three years supervised release)

THE GRAND JURY CHARGES:

COUNT I

That on or about February 28, 2011, at Birney, in the State and District of Montana, and within the exterior boundaries of the Northern Cheyenne Indian Reservation, being Indian country, the defendant, MICHAEL BRYANT, JR., intentionally assaulted C.L.O., a person who cohabitated with and was an intimate partner of the defendant, after having been convicted of at least two separate prior domestic assaults, in violation of 18 U.S.C. § 117(a).

COUNT II

That on or about May 7, 2011, at Birney, in the State and District of Montana, and within the exterior boundaries of the Northern Cheyenne Indian Reservation, being Indian country, the defendant, MICHAEL BRYANT, JR., intentionally assaulted D.E., a person who cohabitated with and was an intimate partner of the defendant, after having been convicted of at least two separate prior domestic assaults, in violation of 18 U.S.C. § 117(a).

A TRUE BILL.

/s/ [ILLEGIBLE]
FOREPERSON

/s/ [ILLEGIBLE] for
MICHAEL W. COTTER
United States Attorney
Attorney for Plaintiff

/s/ [ILLEGIBLE] for
KRIS A. MCLEAN
Criminal Chief Assistant U.S. Attorney
Attorney for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

CR 11-70-BLG-JDS

UNITED STATES OF AMERICA, PLAINTIFF

v.

MICHAEL BRYANT, JR., DEFENDANT

[Filed: Jan. 10, 2012]

CONDITIONAL PLEA AGREEMENT

(Rule 11(a)(2), *Federal Rules of Criminal Procedure* – Reserving Issue for Appeal)

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the United States of America, by E. Vincent Carroll, Assistant United States Attorney for the District of Montana, and the defendant, MICHAEL BRYANT, JR., and his attorney, Steven C. Babcock, have agreed upon the following:

1. The defendant acknowledges that he has been charged in the Indictment in this case with a violations of 18 U.S.C. § 117(a), Domestic Assault By an Habitual Offender.

2. The defendant has read the charges against him contained in the Indictment and those charges have been fully explained to him by his attorney.

3. The defendant fully understands the nature and elements of the crimes with which he has been charged.

4. The defendant will enter a voluntary plea of guilty to counts one and two of the indictment in this case.

5. *Nature of the Agreement:* The parties agree that this plea agreement, which is conditional as to the right to appeal but unconditional as to the sentence that can be imposed by the Court, shall be filed and become a part of the record in this case, and will be governed by Rule 11(a)(2), Federal Rules of Criminal Procedure, wherein the defendant reserves, with the consent of the government, the right to appeal the adverse pre-trial ruling denying defendant's motion to dismiss the indictment by the Court, and make certain nonbinding recommendations as to sentence.

This plea agreement is conditional pursuant to Rule 11(a)(2), Federal Rules of Criminal Procedure. The defendant reserves the right to have an appellate court review the adverse resolution of the defendant's pretrial motion to dismiss. The defendant acknowledges that this right may only be reserved with the consent of the court and the government. By this agreement the United States gives its consent to the defendant's reservation.

Effect of Withdrawal from the Agreement: The parties stipulate and agree that if the defendant moves to withdraw his guilty plea, entered pursuant to and receiving the benefits of this agreement, and if he successfully withdraws his plea either in the district

court or on appeal, that this agreement will become null and void.

Moreover, if the defendant at any time after judgment is entered obtains dismissal, reversal or remand of the count or counts of conviction for any reason, other than on the basis of the issue or issues reserved herein for appeal, the United States will be permitted, by agreement of the parties, to restore all original charges either dismissed or not filed pursuant to this plea agreement. The defendant, in that circumstance, expressly waives any claim of double jeopardy or right to have this agreement enforced. In such event, the defendant waives any objections, motions, or defenses based upon the Statute of Limitations, the Speedy Trial Act, or any other potential restriction on the reinstitution of counts dismissed, or institution of counts surrendered, as part of the consideration given by the prosecution in this agreement.

6. *Admission of Guilt:* The defendant will plead guilty because he is in fact guilty of the charges contained in the Indictment. In pleading guilty, the defendant acknowledges:

Count I

That on or about February 28, 2011, at Birney, in the State and District of Montana, and within the exterior boundaries of the Northern Cheyenne Indian Reservation, being Indian country, the defendant, MICHAEL BRYANT, JR., intentionally assaulted C.L.O., a person who cohabitated with and was an intimate partner of the defendant, after having been convicted of at least two separate prior domestic assaults, in violation of 18 U.S.C. § 117(a).

Count II

That on or about May 7, 2011, at Birney, in the State and District of Montana, and within the exterior boundaries of the Northern Cheyenne Indian Reservation, being Indian country, the defendant, MICHAEL BRYANT, JR., intentionally assaulted D.E., a person who cohabitated with and was an intimate partner of the defendant, after having been convicted of at least two separate prior domestic assaults, in violation of 18 U.S.C. § 117(a).

7. *Maximum Punishment Provided by Law:* The defendant understands the charges to which he will plead guilty carry a maximum penalty of five years, each, imprisonment and a $250,000 fine each. Further, the defendant acknowledges that the crimes to which he is entering a plea are Class D felonies, 18 U.S.C. § 3559(a)(4), which provides for a maximum term of supervised release of three years each. 18 U.S.C. § 3583(b)(2).

8. *Elements of the Charge:* The defendant has been advised of the nature of the charges made against him and the elements of the crimes to which he is entering a guilty plea. The defendant understands that if the case were to go to trial the government would be required to prove each and every element of the crimes. He further acknowledges that these are the elements of the crimes charged in the Indictment:

Domestic Abuse by an Habitual Offender:
Title 18 U.S.C. § 117(a)

First, the crime occurred on the Northern Cheyenne Indian Reservation;

Second, the defendant intentionally committed a domestic assault;

Third, the defendant has at least two separate prior convictions in tribal court, that would be, if subject to federal jurisdiction, an assault against an intimate partner.

The defendant understands that by entering a guilty plea, the government will not be required to present proof of his guilt and the elements recited herein because there will be no trial if the Court accepts his plea of guilty and the plea agreement of the parties.

9. *Recitation of Rights:*

(a) During the entry of any plea pursuant to this plea agreement, the government has a right to use against the defendant, in a prosecution for perjury or false statement, any statement that the defendant gives during any such plea colloquy.

(b) If the defendant persisted in a plea of not guilty to the charges against him, he would have the right to a public and speedy trial. The trial could be either a jury trial or a trial by the judge sitting without a jury.

(c) The defendant has the right to be represented by counsel, and if necessary, have the court appoint counsel, at trial and at every other stage of these proceedings.

(d) If the trial is a jury trial, the jury would be composed of 12 laypersons selected at random. The defendant and his attorney would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is

shown, or without cause by exercising peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that the defendant is presumed innocent, and that it could not convict him unless after hearing all the evidence, it was persuaded of the defendant's guilt beyond a reasonable doubt.

(e) If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not he was persuaded of the defendant's guilt beyond a reasonable doubt.

(f) At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against the defendant. The defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them. In turn, the defendant could present witnesses and other evidence in his own behalf. If the witnesses for the defendant would not appear voluntarily, he could require their attendance through the subpoena power of the court.

(g) At a trial, the defendant would have a privilege against self-incrimination so that he could decline to testify and no inference of guilt could be drawn from his refusal to testify. If the defendant desired to do so, he could testify in his own behalf.

(h) If convicted, and within 14 days of the entry of the Judgment and Commitment, the defendant would have the right to appeal his conviction to the Ninth Circuit Court of Appeals for review to determine if any

errors were made which would entitle him to reversal of the conviction.

(i) The defendant has a right to have the district court conduct the change of plea hearing required by Rule 11, *Federal Rules of Criminal Procedure*. By his execution of this agreement, the defendant expressly waives that right and agrees to hold that hearing before, and allow the Rule 11 colloquy to be conducted by, the U.S. Magistrate Judge.

10. *Waiver of Rights by Plea:* The defendant understands that by pleading guilty pursuant to this agreement, he is waiving all the rights set forth in the prior paragraph. The defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights.

11. *Recommendations:*

The parties are each free to argue for any reasonable sentence.

The United States will recommend that the defendant be given a two point credit for acceptance of responsibility, unless the defendant is found to have obstructed justice prior to sentencing. USSG § 3C1.1.

The United States reserves the right to object to or comment upon the applicability, or inapplicability, of any adjustment or enhancement to be used in the advisory sentencing guideline calculation. The United States further reserves the right to object to a sentence outside the advisory guideline range determined by the Court. The United States will object to making any term of incarceration imposed in this case concurrent to any other sentence the defendant may be serving.

Both parties acknowledge that the Court is not bound by the recommendations of either party, and may sentence the defendant to a sentence anywhere within the advisory Guideline range or may impose any reasonable sentence outside that guideline range.

Although advisory, the parties agree that the U.S. Sentencing Guidelines must be applied, and a calculation determined, as part of the protocol of sentencing to determine what sentence will be reasonable.

12. *Effect of Early Decision*: If the defendant otherwise qualifies for a two level adjustment for acceptance of responsibility, and his offense level is 16 or greater, and if the defendant files this agreement or a Motion for Change of Plea Hearing at least 14 days prior to the date now set for trial, the United States will move the Court at the time of sentencing to award the defendant an additional point for acceptance of responsibility pursuant to USSG § 3E1.1(b).

13. *Non-Prosecution or Dismissal:* Upon acceptance of this agreement by the Court, the United States Attorney for Montana shall bring no further action against the defendant based upon the facts alleged in this Indictment. Both parties acknowledge that the prosecution has no authority to bind the U.S. Probation Office or the Court with respect to guideline enhancements or adjustments they deem appropriate.

14. *Voluntary Plea:* The defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this agreement to induce the defendant to plead guilty.

15. *Special Assessment/ Financial Obligations:* The defendant recognizes that he will be responsible for a mandatory assessment of $100 on each count of conviction pursuant to 18 U.S.C. § 3013 of the Comprehensive Criminal Control Act. The defendant understands and agrees that pursuant to 18 U.S.C. § 3613, whatever monetary penalties are imposed by the Court will be due and payable immediately, and subject to immediate enforcement by the United States. Furthermore, the defendant agrees to provide all of his financial information to the United States and the Probation Office and, if requested, to participate in a pre-sentencing debtor's examination. If the Court imposes a schedule of payments, the defendant understands that the schedule of payments is merely a minimum schedule of payments and not the only method, nor a limitation on the methods available to the United States to enforce the judgment. If the defendant is incarcerated, the defendant agrees to participate in the Bureau of Prisons' Inmate Financial Responsibility Program, regardless of whether the Court specifically directs participation or imposes a schedule of payments.

16. *Detention/Release After Plea:*

Pursuant to 18 U.S.C. § 3143(a)(2), the defendant acknowledges that he will be detained upon conviction unless (A)(i) the Court finds there is a substantial likelihood that a motion for acquittal or new trial will be granted *or* (ii) this agreement provides that the United States will recommend that no sentence of imprisonment be imposed *and* (B) the Court finds, by clear and convincing evidence, that he is not likely to flee or pose a danger to any other person or the com-

munity. Then, if exceptional circumstances exist, the defendant may be released upon conditions.

17. *Entire Agreement:* Any statements or representations made by the United States, the defendant, or his counsel prior to the full execution of this plea agreement are superseded by this plea agreement. No promises or representations have been made by the United States except as set forth in writing in this plea agreement. **This plea agreement constitutes the entire agreement between the parties. Any term or condition which is not expressly stated as part of this plea agreement is not to be considered part of the agreement.**

MICHAEL W. COTTER
United States Attorney

/s/ E. VINCENT CARROLL
E. VINCENT CARROLL
Assistant U. S. Attorney

/s/ MICHAEL BRYANT JR
MICHAEL BRYANT, JR.
Defendant

/s/ STEVEN C. BABCOCK
STEVEN C. BABCOCK
Defense Counsel

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

CR 11-70-BLG-JDS

UNITED STATES OF AMERICA, PLAINTIFF

v.

MICHAEL BRYANT, JR., DEFENDANT

Jan. 12, 2012

OFFER OF PROOF

On January 9, 2012, the defendant filed a motion, *see* Doc # 26, indicating his intent to plead guilty to the indictment, which charges two counts of domestic assault by an habitual offender, each a violation of Title 18 U.S.C. § 117(a). The defendant intends to plead guilty pursuant to a conditional plea agreement, which was filed on January 10, 2012. *See* Doc. # 27. The elements of each offense are:

> **First**, the crime occurred on the Northern Cheyenne Indian Reservation;
>
> **Second**, the defendant intentionally committed a domestic assault; and
>
> **Third**, the defendant has at least two separate prior convictions in tribal court, that would be, if subject to federal jurisdiction, an assault against an intimate partner.

If called upon to prove the case at trial, the United States would have presented the following evidence.

The defendant, Michael Bryant, Jr., is a 48 year-old male, and is an enrolled member of the Northern Cheyenne Tribe of Indians. Each offense took place within the exterior boundaries of the Northern Cheyenne Indian Reservation.

On February 28, 2011, C.L.O. was living with the defendant in Birney, MT, on the Northern Cheyenne Indian Reservation. The defendant grabbed C.L.O. and dragged her off their bed onto the floor. The defendant then pulled C.L.O.'s hair, repeatedly punched and kicked her, and bit her fingers. The defendant then threatened C.L.O. that if she told anyone what had happened he would hurt her.

On May 7, 2011, D.E. was living with the defendant in Birney, MT, on the Northern Cheyenne Indian Reservation. The defendant woke D. E. by yelling at her because he could not find his truck keys. The defendant proceeded to choked D.E. until she almost passed out.

The defendant was interviewed and admitted to the above assaults. The defendant has at least two prior domestic assault convictions in tribal court.

The United States would have presented this evidence through the testimony of law enforcement and witnesses. Additionally, the United States would have presented a tribal enrollment record for the defendant to prove that he is an Indian person.

DATED this 12th day of January, 2012.

MICHAEL W. COTTER
United States Attorney

/s/ E. VINCENT CARROLL
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

CR 11-70-BLG-JDS

UNITED STATES OF AMERICA, PLAINTIFF

v.

MICHAEL BRYANT, JR., DEFENDANT

May 9, 2012
9:19 a.m.

TRANSCRIPT OF SENTENCING HEARING

APPEARANCES:

FOR PLAINTIFF:

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FOR DEFENDANT:

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[3]

THE COURT: We'll have the matter of Michael Bryant.

Mr. Bryant, do you read and write the English language?

THE DEFENDANT: Excuse me?

THE COURT: Do you read and write the English language fluently?

THE DEFENDANT: Oh, yes, yes.

THE COURT: And you have a copy of the presentence report on the podium, and you've had the opportunity to go through that with your attorney, Mr. Babcock?

THE DEFENDANT: Yes.

THE COURT: And you indicate that you have no objections and the Court can rely upon the accuracy of the report?

MR. BABCOCK: That's correct, Your Honor. I just want to point out one thing, that on page 5 of the presentence report, this does not affect the guideline range at all—taking a look at paragraph number 16—

THE COURT: Number what?

MR. BABCOCK: Number 16, Your Honor, on page 5. There's some statements in there about some things that were allegedly done in a sexual nature in this case. Michael objects to those statements. It should not affect anything in regards to his guidelines or what he's pled to as far as the [4] actual offense conduct in this case.

With that, Your Honor, we have no further objections.

THE COURT: Okay. And the Government has no objections?

MS. HURD: No, Your Honor.

THE COURT: For the purposes of the guideline, then, under paragraph 51, the victim of Count I is initial C.L.O. And base offense level for this is found in USSG 2A6.2. Calls for a base offense level of 18. There is a 4-point enhancement under specific offense characteristics. And that is that the offense involved one of the following aggravating factors: A violation of the court protection order; bodily injury, or received—possession, or threatened use, of a dangerous weapon; or pattern of activity involving stalking, threatening, harassing, or assaulting the same victim, increase by 2 levels. If the offense involved more than one of these aggravated factors, increase by 4.

This did include more than one, so we will increase it by 4. Bodily injury to C.L.O. and engaged in a pattern of stalking, threatening, harassing, or assaulting this victim.

In fact, you admitted that you got physical with C.L.O., during the time they were together, between five and six times.

So we have a base level, then, of 22 and have a [5] separate count, domestic assault by a habitual offender. And again, under 2A6.2, calls for a base offense level of 18, an enhancement of 4 because it involved one of the following aggravating factors: Again, a violation of a court protection order; or two, bodily injury; three, possession or threatened use of a dangerous weapon; or four, a pattern of activity involving stalking, threatening, harassing,

or assaulting the same victim, increase by 2 levels. If the offense involves more than one of these aggravating factors, increase by 4.

And it is increased by 4, as defendant caused bodily injury to C.L.O. and engaged in a pattern involving stalking, threatening, or harassing. So we have a level 22.

And under the multiple count adjustment under USSG 3D1.4, why, we enhance it by 2. You now have a combined adjusted offense level of 24. With 3-point reduction for acceptance of responsibility, puts you at a total offense level of 21.

And at a level 21 with a criminal history of I, puts you in the advisory guideline range of 37 to 46 months on each count.

MR. BABCOCK: Thank you. I don't remember. We would respectfully request a sentence in this case within the advisory guidelines, specifically at the low end. He has been incarcerated, at this point, by the calculations in the presentence report, for 352 days. If you take a look at the [6] nature and circumstances of this offense, along with the characteristics of Michael in the past, it is amazingly clear that he has a major problem with alcohol. And that's said in a lot of cases, but it's certainly clear in this case.

In taking a look at what was involved in what he's been charged with in these cases, he certainly needs help. And we would ask for a recommendation with the Bureau of Prisons to the RDAP program. He certainly needs it. I can tell the Court, in my time of representing Michael, I don't think I've ever seen in anybody, anybody that has benefited by time being away from alcohol more than him.

He's thinking way more clear than he was in the past. He looks way better.

And I think that he certainly understands that he cannot keep going down the path that he has been for the majority part of his life. He has a lot of potential. He's got very strong family responsibility. There's been character letters I've submitted to the Court. His parents are here today. And in talking with his parents before court—they're elderly, and they certainly need him at home to help.

He does have the ability to go to work, and he does have the ability to stay sober as long as he is receiving treatment. And that's what he wants to get in this case.

Your Honor, we're going to be asking, once again, for a guideline sentence at the low end with placement—a recommendation in Sheridan, Oregon. They do have the RDAP [7] program there. They have vocational programs that Michael is interested in that we have talked about.

This is an individual that can do well in the future as long as he achieves sobriety and maintains it. I think at this point, after being incarcerated for as long as he has been already, that he knows that he's just a person that cannot drink ever again. And I think he's very serious with that commitment. Thank you.

MS. HURD: Your Honor, on behalf of Mr. Carroll, whose case this is, I was reviewing the presentence report. And the level of violence that this man shows to the women with whom he becomes involved is staggering, along with his past criminal history in tribal court. I stopped counting at a hundred different entries on his criminal history, the majority of which appear to be alcohol related. He certainly has an alcohol problem that

he needs treatment for and anger management problem that he needs treatment for.

We do agree that a sentence within this advisory guideline range is appropriate. But the United States believes the defendant has earned a sentence at the high end of that guideline range followed by the maximum term of supervised release.

THE COURT: This is your opportunity, Mr. Bryant, to address the Court with any comments that you might want.

THE DEFENDANT: I just want to say that I'm sorry [8] that this happened. And I want to apologize to the victims and their families. And also, like my lawyer says, I know I need alcohol treatment. And I want to go through that. And I know that when I get done with treatment, I'll be a better person. And also, I am truly sorry for what happened. Thank you.

THE COURT: All right. Pursuant to Section 18 USC, then, after considering 3553(a) of the sentencing guidelines and policy statements, it is the judgment of the Court that the defendant, Michael Bryant, Jr., is hereby committed to the custody of Bureau of Prisons for a term of 46 months. This term consists of 46 months for Count I and 46 months for Count II, both counts to run concurrent.

And I'm going to order you, if eligible, to get into the 500-hour residential drug treatment program.

Upon release from imprisonment, you'll be placed on supervised release for a term of three years. This term consists of three years for Count I and three years for Count II, both counts to run concurrent.

Within 72 hours of release from the custody of the Bureau of Prisons, you'll report, in person, to the probation officer in the district to which you are released.

While on supervised release, you will not commit any federal, state, or local crime. You shall not possess a controlled substance. You'll be prohibited from owning, [9] using, or being in constructive possession of firearms, ammunition, or other destructive devices while on supervision and anytime after the completion of the period of supervision, unless granted relief by the Secretary of the Treasury.

And you must cooperate in the collection of DNA as directed by the probation officer.

And you must comply with the standard conditions of supervised release as represented by the U.S. Sentencing Commission and have been approved by this Court and the following special conditions: One, you'll participate in substance abuse testing to include not more than 104 urinalysis tests and not more than 104 Breathalyzer tests annually during the period of supervision.

The defendant is to pay all or part of the cost of testing as to be determined by the probation officer.

You'll participate in and complete a program of substance abuse and treatment as approved by the probation officer and continue in it until release from the program by the probation officer.

You'll abstain from the consumption of alcohol and shall not enter establishments where alcohol is the primary item of sale.

You shall not purchase, possess, use, distribute, or administer marijuana or obtain or possess a medical marijuana card or prescription. You'll surrender your medical marijuana [10] card to the U.S. Probation.

You'll participate in the program for mental health treatment as deemed necessary by the U.S. probation officer and continue until such time as you're released from the program by the probation officer.

You'll comply with the violent offender registration requirements for convicted offenders in any state in which you might reside.

You'll submit your person, residence, place of employment, or vehicle to a search conducted by the U.S. Probation Office, based on reasonable suspicion of contraband or evidence in violation of a condition of release. Failure to submit to search may be grounds for revocation.

You shall not ingest or inhale any toxic substances, such as, but not limited to, synthetic marijuana and/or synthetic stimulants that is not manufactured for human consumption, for the purpose of altering your mental or physical state.

I find that you do not have the ability to pay a fine. I'll waive the fine. But there is a special assessment of $100, which is due immediately. And you did reserve, in the plea agreement, the right to appeal the adversary pretrial rulings denying your motion to dismiss this indictment.

MR. BABCOCK: Thank you, Your Honor.

MS. HURD: Your Honor, I believe there were two [11] counts, so the special assessment should be $200 rather than $100.

MR. BABCOCK: That's correct, Your Honor.

(Sentencing Hearing adjourned at 9:33 a.m., May 9, 2012.)

* * * * *

[SEAL OMITTED]

U.S. Department of Justice

United States Attorney
District of Montana

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July 7, 2014
Molly C. Dwyer
Clerk
United States Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, California 94119-3939

RE: *United States v. Bryant*, CA 12-30177

Dear Ms. Dwyer:

This is to inform the Court prior to oral argument on July 10, 2014, of the government's concession that there were not two or more of Bryant's prior tribal court convictions for domestic abuse that involved no sentence of incarceration. In its supplemental brief, the United States argued to the Court that Bryant was "sentenced without prison time on several occasions[.]" Supplemental Brief at 11. Upon further investigation, the United States advises the Court that there were not two or more such prior convictions where no term of imprisonment was imposed.

Sincerely,

MICHAEL W. COTTER
United States Attorney

/s/ LEIF M. JOHNSON
LEIF M. JOHNSON
Assistant U. S. Attorney